IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 6745 of 1995

For Approval and Signature:

Hon'ble MR.JUSTICE K.R.VYAS

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1. Whether Reporters of Local Papers may be allowed to see the judgements? YES.

2. To be referred to the Reporter or not? NO.

3. Whether Their Lordships wish to see the fair copy of the judgement? NO.

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? NO.

5. Whether it is to be circulated to the Civil Judge? NO.

HIVPRASAD VALJIBHAI ACHARYA

Versus

AHMEDABAD EDUCATION SOCIETY

Appearance:

MR CB DASTOOR for Petitioners

MS VASUBEN P SHAH for Respondent No. 1

RULE SERVED BY DS for Respondent No. 2

CORAM : MR.JUSTICE K.R.VYAS

Date of decision: 14/10/98

ORAL JUDGEMENT

1. Both the petitioners in this petition are the retired teachers of respondent No.1- Ahmedabad Education Society, have filed this common petition with a grievance that the respondent without any cause or reason withheld all the retirement dues such as gratuity, P.F.,

compulsory deposit scheme amount and arrears of salary of the pay fixation of 1976 inspite of several demands made by them. On 8-8-95, this Court issued notice to the respondents calling upon them as to why the petition should not be admitted and disposed of finally at the admission stage. The matter was thereafter adjourned from time to time. On 1-5-96, this Court issued Rule in the matter and by way of interim relief directed that the respondents should work out whatever amounts are payable according to them to the petitioners and pay the same within four weeks from today i.e. from 1-5-96 subject to the rights and contentions of both the sides and the outcome of this petition.

2. In compliance with this order, respondent has paid the amount of P.F., difference of D.A. and the difference of C.D.S. and there is no dispute to the fact that the petitioners have accepted the said amount. It appears that the amount of gratuity has not been paid. Learned advocate for the petitioner Mr. C.B. Dastoor has invited my attention to the Rules framed by the respondent about the gratuity. They are as under :

1. Gratuity cannot be claimed as a matter of right, but will depend upon satisfactory record of service and good conduct of which the Governing Body shall be the final judge.

2. No gratuity shall be payable to an employee dismissed from service for any reason whatsoever.

3. Gratuity shall be paid on the death, retirement, resignation or termination of service at a rate of 1/2 month's basic salary (excluding all allowances) for each completed year of service on completion of 10 years' service; the gratuity shall be raised to 3/4 month's basis salary (excluding all allowances) for each completed year of service on completion of 15 years' service. The total amount of the gratuity shall be a maximum of 15 months' salary or Rs.15,000/- whichever is less.

4. Salary for the purpose of gratuity shall mean the average basic salary (excluding all allowances) drawn by the employee during the twelve months' period of active service immediately preceding death, retirement, resignation, or termination of service.

5. The gratuity when paid to any employee shall be debited to the Gratuity expenses account.

3. As per the submission of Mr. Dastoor, the petitioners under the said Rules are entitled to receive the amount of gratuity. On the other hand, Ms. Brahmabhatt on behalf of the respondent has submitted that even as per the Rules framed by the respondents, the amount of gratuity cannot be claimed as a matter of right, but the same will depend upon satisfactory record of service and good conduct of which the Governing Body shall be the final judge. It is further contended that the respondent is not aided by the State Government, and therefore, nobody has been paid till the date the amount of gratuity, and therefore, even on this ground also the petitioners are not entitled the said benefit. I am not in agreement with the submission advanced on behalf of the respondents. The petitioners who have retired after putting long tenure of service on reaching the age of 58 years with unblemished record are entitled to claim the amount of gratuity in view of Rule 1 of the Rules which provides satisfactory record and service and good conduct Merely because no decision is taken by the Governing Body of the respondent to consider the question of gratuity, it is not the ground to reject the just and valid claim of the petitioner. Even if respondent is not aided by the State Government, in view of their own Rules, the petitioners cannot be denied with the benefit of gratuity. As per Rule 3 of the Rules, maximum 15 months' salary or Rs.15,000/- whichever is less is the amount which the petitioners are entitled to receive. In this view of the matter, the petition is allowed to the effect that the petitioners are entitled to receive the amount of gratuity in view of the Rules of the respondent. In view of this, respondents are directed to pay Rs.15,000/(Rupees Fifteen Thousand Only) to each petitioner as gratuity, with 12 % interest from the date of their retirement till the amount is paid. Respondents are directed to pay the said amount within three weeks from today. Rule is made absolute to the aforesaid extent with no order as to cost.

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